

ESTTA Tracking number: **ESTTA396354**

Filing date: **03/04/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91191056
Party	Defendant Franciscan Vineyards, Inc.
Correspondence Address	JOHN M RANNELLS BAKER & RANNELLS PA 575 ROUTE 28, SUITE 102 RARITAN, NJ 08869-1354 UNITED STATES jmr@br-tmlaw.com
Submission	Testimony For Defendant
Filer's Name	John M. Rannells
Filer's e-mail	jmr@br-tmlaw.com, k.hnasko@br-tmlaw.com, n.friedman@br-tmlaw.com
Signature	/john rannells/
Date	03/04/2011
Attachments	91191056 testimony black.pdf ( 22 pages )(1531144 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X  
White Rock Distilleries, Inc.

Opposer

v.

Franciscan Vineyards, Inc.

Applicant  
-----X

**Opposition No. 91191056**

Mark: PINNACLES RANCHES

Serial No.: 77/598674

**COMBINED NOTICE OF FILING OF TESTIMONY TRANSCRIPT AND EXHIBITS  
PURSUANT TO 37 CFR 2.125(c) and NOTICE OF SERVICE OF TRANSCRIPTS AND  
EXHIBITS PURSUANT TO 37 CFR 2.125(a)**

Applicant, Franciscan Vineyards, Inc., hereby files the trial testimony of Mr. Geoffrey Scott Black, taken on January 6, 2011 along with the trial exhibit "A".

Ex. "A": PINNACLES Market Performance for FY10

A copy of the referenced testimony transcript with exhibit "A" was served upon the Applicant's attorneys on January 24, 2011 and again today on March 4, 2011 via first class mail postage prepaid to the following address. Daniel I. Schloss, Esq., Greenberg Traurig, LLP, 200 Park Avenue, 34<sup>th</sup> Floor, New York, N.Y. 10166

Respectfully submitted,

BAKER and RANNELLS PA

John M. Rannells  
Attorneys for Opposer  
575 Route 28, Suite 102  
Raritan, New Jersey 08869  
jmr@br-tmlaw.com / 908-722-5640

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **COMBINED NOTICE OF FILING OF TESTIMONY TRANSCRIPT AND EXHIBITS PURSUANT TO 37 CFR 2.125(c) and NOTICE OF SERVICE OF TRANSCRIPTS AND EXHIBITS PURSUANT TO 37 CFR 2.125(a)** in re White Rock Distilleries, Inc. v. Franciscan Vineyards, Inc., Opposition No. 91191056 was forwarded by first class postage pre-paid mail this 4<sup>th</sup> day of March, 2011 to the Applicant's attorneys at the following address:

Daniel I. Schloss, Esq.  
Greenberg Traurig, LLP  
200 Park Avenue, 34<sup>th</sup> Floor  
New York, N.Y. 10166



John M. Rannells

DATED: March 4, 2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

---oOo---

FRANCISCAN VINEYARDS, INC.,      Opposition No .  
91185984

Opposer,

Mark: PINNACLE

vs.

Serial No. 78166136

Filed: 9/20/2002

WHITE ROCK DISTILLERIES, INC.,  
Applicant.

**Certified  
Transcript**

DEPOSITION OF GEOFFREY SCOTT BLACK  
THURSDAY, JANUARY 6, 2011

Job No. NJ299979

Pages 1 - 20

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Deposition of GEOFFREY SCOTT BLACK, taken at  
1265 Battery Street, San Francisco, California  
94111, commencing at 9:33 a.m., Thursday,  
January 6, 2011, before Deborah Lee Lubin, CSR  
No. 3234, RPR, CRP.

1 APPEARANCES OF COUNSEL:

2  
3 FOR FRANCISCAN VINEYARDS, INC.:

4 BAKER AND RANNELLS, PA

5 BY: JOHN M. RANNELLS, ESQ.

6 NEIL B. FRIEDMAN, ESQ.

7 575 Route 28

8 Suite 102

9 Raritan, New Jersey 08869

10 908.722.5640

11 908.725.7088 (Facsimile)

12 jmr@br-tmlaw.com

13 n.friedman@br-tmlaw.com

14  
15 FOR WHITE ROCK DISTILLERIES, INC.:

16 GREENBERG TRAURIG, LLP

17 BY: DANIEL I. SCHLOSS, ESQ.

18 MASAHIRO NODA, ESQ.

19 200 Park Avenue

20 New York, New York 10166

21 212.801.2256

22 212.805.5571 (Facsimile)

23 schlossd@gtlaw.com

24 nodam@gtlaw.com

1 SAN FRANCISCO, CALIFORNIA; THURSDAY, JANUARY 6, 2011

2  
3 (Time noted as 9:33 a.m.)

4  
5 GEOFFREY SCOTT BLACK,  
6 called as a witness, having been first duly sworn,  
7 was examined and testified as follows:

8 EXAMINATION

9 Q. BY MR. FRIEDMAN: Good morning.

10 A. Good morning.

11 Q. All right. Mr. Black, do you understand  
12 that you are appearing today by a Notice of  
13 Deposition to give testimony in a proceeding? There  
14 are actually two opposition proceedings. One is  
15 entitled Franciscan Vineyards, Inc. versus White Rock  
16 Distilleries, Inc., and that is actually the  
17 deposition for which we've noticed you, and actually  
18 that is the only deposition that we've noticed.

19 You understand that?

20 A. Yes, I do.

21 Q. And Mr. Black, by whom are you currently  
22 employed?

23 A. Constellation Wines.

24 Q. And are you familiar with their affiliated  
25 company, Franciscan Vineyards, Inc.?

1 A. Yes, I am.

2 Q. What is your current position at  
3 Constellation Wines?

4 A. I am the marketing manager for the central  
5 coast portfolio which encompasses the Estancia,  
6 Wild Horse and Paso Creek brands.

7 Q. And when did you start in that position?

8 A. In May of 2010.

9 Q. And what are your duties and  
10 responsibilities as far as management of those  
11 brands?

12 A. I manage the marketing aspects of the  
13 brand, basically controlling and managing any  
14 marketing-related functions.

15 Q. As a function of the marketing duties that  
16 you have for the company are you also provided access  
17 to certain data and information concerning sales for  
18 the company?

19 A. Yes, I am.

20 Q. And how is that data important for you as a  
21 brand manager?

22 A. It allows me to track the performance on a  
23 monthly basis and an annual basis, obviously, of the  
24 brands I'm responsible for and make adjustments to  
25 the marketing mix to optimize performance



1 accordingly.

2 Q. Prior to the position that you hold now at  
3 Constellation, where were you employed?

4 A. I was employed by the Hain Celestial Group.

5 Q. And what was your position at that company?

6 A. I was the brand manager for Spectrum  
7 organic products, which was one of the brands that  
8 the conglomerate controlled.

9 Q. How many years did you hold that position?

10 A. I held that position since 2004, six years.

11 Q. And what were your duties and  
12 responsibilities for that brand?

13 A. It was similar to those that I hold for  
14 Constellation. It was basically managing all  
15 marketing aspects of the brand.

16 Q. And prior to your employment at Hain  
17 Celestial, by whom were you employed?

18 A. I was employed at Big Horn Cellars, which  
19 was a small boutique wine producer in Napa Valley.

20 Q. What was the position you held there?

21 A. Marketing manager.

22 Q. And how many years did you hold that  
23 position?

24 A. That was about one year.

25 Q. And what were your duties and

1 responsibilities at that company?

2 A. Similar to the other positions I've  
3 described. Basically I was responsible for the  
4 marketing management or management of the marketing  
5 functions of the brand.

6 Q. And at that particular winery what brands,  
7 as examples, did you manage?

8 A. It was a small boutique producer so they  
9 primarily had one brand. It wasn't a portfolio  
10 situation. And the brand was Big Horn Cellars.

11 Q. And prior to working at Big Horn by whom  
12 were you employed?

13 A. I was employed at Heck Estates, which is  
14 another wine producer which is located in Sonoma.

15 Q. And how many years did you work for them?

16 A. About a year and a half.

17 Q. And what was your position at that winery?

18 A. I was a marketing manager.

19 Q. What were your duties and responsibilities  
20 there?

21 A. I managed the marketing functions of the  
22 portfolio that I was tasked with, and that included  
23 three brands: Kenwood, Valley of the Moon and Lake  
24 Sonoma.

25 Q. Prior to that employment did you have any

1 other employment?

2 A. Yes. I was employed by Southcorp Wines,  
3 all one word, which at the time was Australia's  
4 largest wine company, and I managed various brands  
5 within their portfolio, depending on the year.

6 Q. Any other employment before that?

7 A. I was doing my Master's of Business  
8 Administration before that, and prior to that I was  
9 working outside the marketing function.

10 Q. That is your degree, you have an MBA?

11 A. Correct.

12 Q. How many years all together at this point  
13 have you been working in the wine industry?

14 A. Setting aside the time that I was at  
15 Spectrum, which was a food company, I was employed  
16 from '98 until the present, minus six years.

17 Q. In connection with your testimony here  
18 today did you conduct any searches in connection with  
19 the sales and performance of the Pinnacles brand of  
20 wines that are sold by Franciscan in the  
21 United States?

22 A. Yes.

23 MR. FRIEDMAN: I am going to show you now  
24 what I would like to have marked as Exhibit A.

25 (Exhibit A marked for identification.)

1 Q. BY MR. FRIEDMAN: Looking at Exhibit A, do  
2 you recognize that document?

3 A. Yes, I do.

4 Q. How do you recognize that document?

5 A. I prepared it for the deposition.

6 Q. What is the information that is contained  
7 on this document?

8 A. Basically this document isolates the market  
9 performance for the FY10 fiscal year of the skus in  
10 question.

11 Q. And when you say the "skus in question,"  
12 how did you isolate out which skus that you were  
13 going to study in connection with today's testimony?

14 A. These are the three skus that are currently  
15 within our portfolio that bear the Pinnacles  
16 sub-branding on it.

17 Q. And when you say "sub-brand," what do you  
18 mean by that?

19 A. It's a tier designation that exists below  
20 the primary brand, which is the Estancia brand.

21 Q. And when you gathered these figures, can  
22 you explain to us what appears on the summary table?

23 A. This basically tells the volume in nine  
24 liter equivalent cases, which equates to 367,021.  
25 That equates to a gross dollar sales of approximately

1     \$34 million.

2           Q.   When you say fiscal year 2010, what in real  
3 months and date is that?

4           A.   That would be -- our fiscal year for  
5 Constellation runs from February to -- excuse me, it  
6 runs from March to February of each year, so it would  
7 be approximately a year behind the calendar year.

8           Q.   And we also have here what you've indicated  
9 as Pinnacles-related marketing spend?

10          A.   Correct.

11          Q.   Can you explain to us what that figure is?

12          A.   That is basically an extrapolation. We  
13 don't isolate by each sku what our marketing spend  
14 is, but the three Pinnacle skus in question, it  
15 represents approximately 47 percent in FY10 of our  
16 total volume. So basically that represents 47  
17 percent of our total marketing spend, according to  
18 the records that I reviewed.

19          Q.   Now, when you mentioned your "total volume  
20 spend," what do you mean by that for the  
21 expenditures? When you gathered or extrapolated out  
22 this number, how were those expenditures made for  
23 advertising?

24          A.   I'm not sure I understand the question.

25          Q.   I think when you responded to my question

1 you said that the extrapolation that you made was  
2 against total volume. Can you perhaps explain  
3 further how you gathered specifically the marketing  
4 dollar number?

5 A. Yes. Well, the marketing dollar number  
6 appears -- it's a readily available number in our  
7 marketing records. It's part of the master P&L,  
8 marketing spend by year, and basically the skus in  
9 question represent about 47 percent of the total  
10 volume of case volume that we sold in FY10.

11 So by extrapolation, we take the total  
12 marketing budget. We take 47 percent of that, and  
13 that would roughly equate to what we spent against  
14 those skus.

15 Q. You've used the words "we" and "our" in  
16 explaining your answer. For clarification purposes,  
17 are you referring to specifically the Estancia brand?

18 A. Correct.

19 Q. And these are expenditures and sales of  
20 Franciscan Vineyards, Inc.?

21 A. Correct.

22 Q. Now, in connection with your position are  
23 you also familiar with -- within your position and  
24 based upon the financial information that you  
25 provided for Franciscan Vineyards, Inc., are you also

1 aware of how the brand has been performing,  
2 specifically the Pinnacles and  
3 Pinnacles Ranches-branded wine products for year  
4 2011, fiscal year 2011?

5 A. Yes, I am.

6 Q. And can you tell us approximations as far  
7 as how the brand has been performing this year?

8 A. The brand has been performing very well  
9 this year.

10 Q. And in connection with the numbers that  
11 we've seen for 2010, can you give us any insight as  
12 to where we are for 2011?

13 A. I can. I did jot a number down before I  
14 came up so I'll just refer to my note.

15 So the year-to-date depletes, which is  
16 basically the volume -- excuse me. Sorry. I grabbed  
17 gross sales.

18 So year to date -- fiscal year to date, so  
19 that's February through November of this year, the  
20 Pinnacles-related skus -- excuse me, the total brand  
21 generated gross sales of \$11,669,000.

22 And again, if we extrapolate -- using the  
23 FY10 volume percentage, if we extrapolate that over  
24 47 percent of volume, that would roughly equate to  
25 significance to the business of \$5,484,430.

1 Q. So just to round that up here, what we are  
2 saying is for fiscal year 2011, the Estancia  
3 Pinnacles, Pinnacles Ranches products are roughly  
4 half the volume of the business?

5 A. Correct.

6 Q. Now, within your position are you aware of  
7 any enforcement actions that Franciscan Vineyards,  
8 Inc. has taken in connection with third parties who  
9 may have used or are using the designation or the  
10 trademark Pinnacles or variations thereof?

11 A. Yes, I am.

12 Q. What, if anything, are you aware of?

13 A. Only that such actions have been taken.

14 Q. And that includes the present action?

15 A. Correct.

16 Q. And who has been taking that action?

17 A. I believe that's been our corporate  
18 attorneys.

19 MR. FRIEDMAN: Excuse me just one second.

20 (Brief pause in proceedings.)

21 MR. FRIEDMAN: No further questions.

22 MR. RANNELLS: We are taking a break.

23 (Whereupon, a recess was taken from

24 9:47 a.m. until 9:59 a.m.)  
25



EXAMINATION

Q. BY MR. SCHLOSS: Good morning again,  
Mr. Black.

A. Good morning.

Q. Just a couple of additional questions for  
you.

You said earlier that you manage several  
brands; is that correct?

A. In my current capacity?

Q. Yes.

A. Yes.

Q. Each brand has its own marketing budget,  
right?

A. Correct.

Q. And the marketing budget is allocated for  
the entire brand, not for any particular sub-brands,  
correct?

A. Right.

Q. Now, with respect to your calculation of  
what has been called Pinnacles-related marketing  
spend, can you explain again how you arrived at the  
\$1,364,497 number for FY 2010?

A. Yes. So as I mentioned in my testimony, we  
don't allocate marketing spend to specific the skus.  
It is for the brand as a whole, and that's the way

1 it's done across the company. And in my experience,  
2 that's the way most companies do it.

3 But if we have to try to isolate a  
4 particular spend according to the skus in question,  
5 the easiest way to do it is to equate the rough  
6 volume importance of the skus in question to the  
7 overall business, and extrapolate that percentage  
8 across to the marketing spend. So that is how I  
9 arrived at that.

10 Q. So the extrapolation that you're using here  
11 is that since what has been called the Pinnacles skus  
12 comprise 47 percent of sales, that you are suggesting  
13 that 47 percent of the entire marketing budget should  
14 be deemed Pinnacles-related marketing expense?

15 A. Correct.

16 Q. Do sales percentages and marketing spend  
17 percentages tend to correlate precisely?

18 A. In my experience, yes.

19 Q. They do?

20 A. Yes.

21 Q. But would they reverse correlate? In other  
22 words -- well, withdrawn.

23 Can you describe how marketing dollars in  
24 fiscal year 2010 were spent with respect to the  
25 Estancia brand.

1 A. I cannot. It was before my tenure.

2 Q. The entire fiscal year was before your  
3 tenure?

4 A. Correct.

5 Q. Do you know, even though it was before your  
6 tenure, how those dollars were spent?

7 A. I do not.

8 MR. SCHLOSS: Okay. Nothing further.

9 Thank you.

10 THE WITNESS: Thanks.

11 MR. RANNELLS: Thank you. I appreciate it.

12 (Off-the-record discussion.)

13 (Recess taken from 10:03 a.m. until

14 10:23 a.m.)

15 MR. RANNELLS: I would just state that we  
16 will not be calling Mr. Lewin to testify today -- or  
17 period. We will not be calling Mr. Lewin to testify.

18 MR. SCHLOSS: Thank you for clarifying.

19 (Proceedings adjourned at 10:23 a.m.)  
20  
21  
22  
23  
24  
25

WITNESS DECLARATION

I declare under penalty of perjury under the laws of  
the State of California that the foregoing is true  
and correct.

Executed on \_\_\_\_\_, 2011,  
at \_\_\_\_\_, California.

\_\_\_\_\_  
GEOFFREY SCOTT BLACK

1 STATE OF CALIFORNIA )  
 ) ss.  
2 COUNTY OF SAN FRANCISCO)

3  
4 I hereby certify that the witness in the  
5 foregoing deposition, *GEOFFREY HOTT BLACK*, was by me  
6 duly sworn to testify to the truth, the whole truth  
7 and nothing but the truth, in the within-entitled  
8 cause; that said deposition was taken at the time and  
9 place herein named; that the deposition is a true  
10 record of the witness's testimony as reported by me,  
11 a duly Certified Shorthand Reporter, and a  
12 disinterested person, and was thereafter transcribed  
13 into typewriting by computer.

14 I further certify that I am not interested in  
15 the outcome of said action, nor connected with, nor  
16 related to, any of the parties in said action, nor to  
17 their respective counsel.

18 IN WITNESS WHEREOF, I have hereunto set my hand  
19 and affixed my signature this *18TH* day of *JANUARY*  
20 2011.

21  
22   
23

24 DEBORAH LEE LUBIN, CSR No. 3234, RPR, CRP  
25

I N D E X

Thursday, January 6, 2011

WITNESS:

PAGE

GEOFFREY SCOTT BLACK

EXAMINATION:

BY MR. FRIEDMAN

4

BY MR. SCHLOSS

14

DEPOSITION EXHIBITS:

NO.	DESCRIPTION	IDENTIFICATION
Exhibit A	Document related to market performance for the FY10 fiscal year	8

Pinnacles Skus	Volume	Gross \$
Period		
FY2010	367,021	\$34,619,050
Pinnacles Related Marketing Spend		
FY2010	\$1,364,497	

